



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Tours, Lodging & Conferences, Inc.

File: B-270478

Date: March 8, 1996

Philip E. Johnson for the protester.

J. William Bennett, Esq., for CMS, Inc./Staten Island Hotel, an intervenor.

Nicholas P. Retson, Esq., and Philip T. McCaffrey, Esq., Department of the Army, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contention that award was improper because the awardee had been terminated as a corporation under state law for failing to file an annual report is denied where the awardee was reinstated prior to award of the contract and was never in a position to elect to avoid the contract award.

DECISION

Tours, Lodging & Conferences, Inc. (TLC) protests the award of a contract to the joint venture, Command Management Services, Inc. d/b/a Convention Marketing Services, Inc. (CMS)/ Staten Island Hotel, under invitation for bids (IFB) No. DAKF-29-95-B-0041, issued by the Department of the Army for meals, lodging and transportation services in support of the Military Entrance Processing Center in New York, New York. TLC contends that the awardee's bid was nonresponsive because CMS, one of the joint venture partners, lacked corporate existence at the time of bid opening.

We deny the protest.

The IFB, issued September 7, 1995, contained the certification found at Federal Acquisition Regulation § 4.102, entitled "Contractor's Signature," under which CMS/Staten Island certified that it was a joint venture consisting of two corporate entities. Bids were opened September 19. After the low bid was determined to be nonresponsive, award was made to CMS/Staten Island, the second-low bidder, on October 10. TLC protested to the agency on October 20, alleging that at the time of bid opening one of the joint venture partners, CMS, had involuntarily had its corporate status dissolved by the state of Oregon for failure to timely file its annual report.

The agency reports that the contracting officer was not aware of any defects in the awardee's corporate status up through the time of award and that when she first learned of this allegation with the filing of TLC's protest, she sought information on this matter. CMS' president explained to the contracting officer that at the time of bid submission she was unaware of the involuntary dissolution, which had occurred on February 27 because of CMS' failure to file its required corporate annual report. In the process of renewing CMS' corporate credit line in September, the president became aware of the dissolution and immediately initiated steps to obtain reinstatement, which was obtained October 9. CMS' president submitted to the Army a copy of the reinstatement certificate. The state of Oregon corporate reinstatement certificate states that, pursuant to Oregon State Law, when reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes business as if the administrative dissolution had never occurred. Because CMS was reinstated on October 9, before the contract award, the Army determined that the contract was binding and could not be avoided by CMS. Based on this finding, the Army denied TLC's protest on October 31 and this protest to our Office followed.

TLC argues that because of CMS' involuntary dissolution, CMS did not legally exist as a corporate entity at the time of bid opening and therefore the bid must be rejected as nonresponsive. To support its position, the protester cites Delaware East Wind, Inc., B-221314, Mar. 12, 1986, 86-1 CPD ¶ 246, in which we held that a bid submitted by a corporation, which the contracting officer knew was not in existence at bid opening under applicable state law, was properly rejected as nonresponsive. We reasoned that to permit otherwise would enable irresponsible parties to undermine the competitive bidding procedures by submitting bids that could be avoided or backed up by real principals as their interests might dictate. The protester also cites Casper Constr. Co., Inc., B-253887, Oct. 26, 1993, 93-2 CPD ¶ 247, in which we held that a bid was properly rejected where the contracting officer was aware of the bidder's corporate dissolution prior to award and reinstatement had not yet occurred at the time of award.

The protester's reliance on these cases is misplaced. Here, the agency discovered after award that while CMS' corporate status had previously been dissolved, it had been reinstated prior to award, with the reinstatement dating back to the date of dissolution. Consequently, CMS was never in a position in which it could have asserted its lack of capacity in order to avoid the contract award.

We have recognized the propriety of a contract award in circumstances less clear-cut than those present here. In Forbes Aviation, Inc., B-248056, July 29, 1992, 92-2 CPD ¶ 58, we stated that there is no basis to object to the award of a contract to a corporation, which at the time of submission of proposals and award had been automatically terminated because of an apparent inadvertent failure to file its annual report, but which took steps to become reinstated immediately when the

situation was brought to its attention. We found that notwithstanding the revocation of a firm's corporate status, the award was proper because the same firm which submitted the proposal would perform the contract and it did not appear that the firm would have been permitted to avoid the government's acceptance of its offer. See also Triad Research, Inc., B-225793, July 6, 1987, 87-2 CPD ¶ 58; Telex Communications, Inc.; Mil-Tech Sys., Inc., B-212385; B-212385.2, Jan. 30, 1984, 84-1 CPD ¶ 127, recon. denied in part and aff'd in part, B-212385.3, Apr. 18, 1984, 84-1 CPD ¶ 440, rev'd on other grounds, B-212385.4; B-212385.5, June 18, 1984, 84-1 CPD ¶ 632.

For the same reasons, we have no basis to object to this award. CMS took steps to become reinstated prior to the award and CMS was in fact reinstated prior to award. As was the case in Forbes Aviation, Inc., supra, the applicable state law provides that upon reinstatement of a corporation, its corporate existence is deemed to have continued from the date of termination of its corporate existence. Because CMS' corporate status is deemed to have continued from February 27, CMS is, and was, at all relevant times legally bound to perform the contract. Therefore, there is no credible basis to object to the award.

The protest is denied.

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